

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT WISCONSIN**

DARNELL KELLEY and)	
PHYLLIS LEE-KELLEY,)	
)	
Plaintiffs,)	NO. 21-cv-_____
v.)	
)	
MENARD, INC. and NATIONAL UNION)	
FIRE INSURANCE COMPANY OF)	
PITTSBURGH, PA.)	
)	
Defendants.		

NOTICE OF REMOVAL

To: The United States District Court for the Eastern District of Wisconsin.

Plaintiff's Counsel: Paul V. Gagliardi
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Salem, WI 53168
(262) 843-3400

Defendant, MENARD, INC., by and through their attorneys, Lewis Brisbois Bisgaard & Smith LLP, hereby provides notice pursuant to 28 U.S.C. §§1441 and 1446 of the removal of the above-captioned matter from the Circuit Court of Milwaukee County, Wisconsin, to the United States District Court for the Eastern District of Wisconsin. The grounds for removal are as follows:

1. On May 27, 2022, Plaintiffs Darnell Kelley and Phyllis-Lee Kelley filed a Complaint at law in the Circuit Court of Milwaukee County, Wisconsin, against Defendants Menard, Inc. and National Union Fire Insurance Company of Pittsburgh, PA (*See* Exhibit 1, Plaintiff's Complaint).

2. Plaintiff's Complaint alleges that Plaintiff was injured as a proximate result of Defendants' negligence. (*See* Exhibit 1).

I. REMOVAL IS PROPER BECAUSE THIS COURT HAS SUBJECT MATTER DIVERSITY PURSUANT TO 28 U.S.C. §§ 1332 AND 1441.

3. Plaintiff is a citizen of the State of Illinois.

4. Defendant Menard is a corporation duly organized and existing under the laws of Wisconsin, with its principal place of business in the State of Wisconsin, at 5101 Menard Drive, Eau Claire, Wisconsin. As such, Defendant is a citizen of the State of Wisconsin. (*See* Exhibit 2, Corporate Disclosure Statement).

5. Defendant National Union Fire Insurance Company of Pittsburgh, PA is a corporation with its principal place of business located at 2595 Interstate Drive, Suite 103, Harrisburg, Pennsylvania 17110. As such, Defendant National Union is a citizen of the State of Pennsylvania. (*See* Exhibit 1 ¶ 5).

6. The amount in controversy in this action exceeds \$75,000.00. Plaintiffs' Complaint claims that as a result of Defendant Menard's alleged negligence, Plaintiff Darnell Kelley sustained serious bodily harm and injury. Medical bills received from Plaintiffs show that Plaintiff Darnell Kelley is claiming at least \$94,553.49 in past medical expenses.

7. Therefore, the United States District Court of the Northern District of Illinois has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(2)(c)(1), as there is complete diversity of citizenship between the Plaintiff and all Defendants and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

II. THE PROCEDURAL REQUIREMENTS OF REMOVAL ARE MET

8. Pursuant to 28 U.S.C. § 1441(a), true and correct copies of all process, pleadings, orders and other documents filed in the state court action are attached as Exhibit A.

9. Plaintiff's Complaint was served on Defendant Menard, Inc. on June 2, 2022. Section 1446(b)(1) requires a notice of removal to be filed within thirty days of the service of a complaint upon the defendant. *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S.

344, 354 (1999) (Thirty-day time limit for removal runs from date of formal service of the initial complaint). Accordingly, the time period for Defendant Menard, Inc. to file its Notice of Removal runs to July 2, 2022. Because this Notice was filed on June 22, 2022, it was timely filed.

10. The United State District Court for the Eastern District of Wisconsin presides in the locality in which the state court action is now pending. It is therefore a proper forum for removal. *See* 28 U.S.C. §§ 93(c), 1441(a).

11. A copy of this Notice of Removal is being served on Plaintiff and a copy is being filed with the state court. *See Id.* § 1446(d).

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38, Defendant Menard, Inc. respectfully demands a jury trial on all triable issues in this action.

CONCLUSION

WHEREFORE, Defendant Menard, Inc. respectfully requests that this action be removed from the Circuit Court of Milwaukee County, Wisconsin, and that this court accept jurisdiction over this action and place it on this court's docket for further proceedings, as though it was originally initiated in this court.

Date: June 23, 2022

Respectfully submitted,

/s/ Timothy J. Young

Timothy J. Young (WI Bar No. 1014437)

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